

Law Offices

DOCKET FILE COPY ORIGINAL

HOLLAND & KNIGHT LLP

2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006-6801

202-955-3000
FAX 202-955-5564
www.hklaw.com

RECEIVED

MAY - 4 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Atlanta	Northern Virginia
Boston	Orlando
Bradenton	Providence
Chicago	St. Petersburg
Fort Lauderdale	San Antonio
Jacksonville	San Francisco
Lakeland	Seattle
Los Angeles	Tallahassee
Melbourne	Tampa
Miami	Washington, D.C.
New York	West Palm Beach

International Offices:

Buenos Aires*	São Paulo
Mexico City	Tel Aviv*
Rio de Janeiro	Tokyo

* Representative Offices

May 4, 2001

JONATHAN EPSTEIN
202-828-1870

Internet Address:
jepstein@hklaw.com

VIA HAND DELIVERY

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

RE: In the Matter of Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commissions' Rules to Authorize Subsidiary Terrestrial Use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and Application of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to Provide A Fixed Service in the 12.2-12.7 GHz Band
ET Docket No. 98-206, RM-9147, RM-9245

Dear Ms. Salas:

Transmitted herewith, on behalf of SkyTower Inc., is an original and four (4) copies of SkyTower's Reply to NorthPoint Technology, Ltd.'s Opposition to SkyTower's Petition for Reconsideration in the above-captioned proceeding.

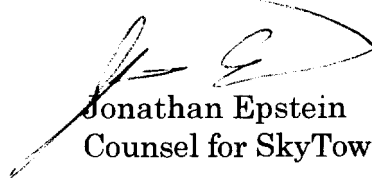
An extra copy of the filing is enclosed. Please date-stamp the extra copy and return it to the courier for return to me.

No. of Copies rec'd 014
List A B C D E

Magalie Roman Salas
May 4, 2001
Page 2

Please direct any correspondence concerning this filing to the undersigned counsel.

Respectfully submitted,



Jonathan Epstein
Counsel for SkyTower Inc.

Enclosure

WAS1 #926482 v1

RECEIVED

MAY - 4 2001

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Amendment of Parts 2 and 25 of the Commission's)
Rules to Permit Operation of NGSO FSS Systems)
Co-Frequency with GSO and Terrestrial Systems in)
the Ku-Band Frequency Range;)
)
Amendment of the Commission's Rules to)
Authorize Subsidiary Terrestrial Use of the)
12.2 -12.7 GHz Band by Direct Broadcast Satellite)
Licensees and Their Affiliates; and)
)
Application of Broadwave USA,)
PDC Broadband Corporation, and)
Satellite Receivers, Ltd. to Provide)
A Fixed Service in the 12.2-12.7 GHz Band)

ET Docket No. 98-206
RM-9147
RM-9245

To the Commission:

**SKYTOWER INC.'S REPLY TO NORTHPOINT TECHNOLOGY, LTD'S
OPPOSITION TO SKYTOWER INC.'S PETITION FOR RECONSIDERATION**

Marvin Rosenberg
Jonathan Epstein
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006
(202) 955-3000
Counsel for SkyTower, Inc.

May 4, 2001

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Parts 2 and 25 of the Commission's)	
Rules to Permit Operation of NGSO FSS Systems)	
Co-Frequency with GSO and Terrestrial Systems in)	
the Ku-Band Frequency Range;)	
)	
Amendment of the Commission's Rules to)	ET Docket No. 98-206
Authorize Subsidiary Terrestrial Use of the)	RM-9147
12.2 –12.7 GHz Band by Direct Broadcast Satellite)	RM-9245
Licensees and Their Affiliates; and)	
)	
Application of Broadwave USA,)	
PDC Broadband Corporation, and)	
Satellite Receivers, Ltd. to Provide)	
A Fixed Service in the 12.2-12.7 GHz Band)	

To the Commission:

**SKYTOWER INC.'S REPLY TO NORTHPOINT TECHNOLOGY, LTD'S
OPPOSITION TO SKYTOWER INC.'S PETITION FOR RECONSIDERATION**

SkyTower Inc. ("SkyTower"), by and through counsel, herein replies to Northpoint Technology LTD's, and Broadwave USA, Inc.'s, Opposition to Petitions for Reconsideration of First Report and Order (hereinafter "Northpoint Opposition").

As discussed below, Northpoint, in its Opposition, seeks to twist the separate FCC functions of rulemaking and licensing into a single step. Northpoint attempts to use the language in SkyTower's Petition for Reconsideration ("SkyTower Petition") to support Northpoint's unreasonable objective, which is to preclude any

other applicant or technology from being considered eligible to operate in the 12.2-12.7 GHz band. Northpoint's position is not only untenable, but it also would require a significant departure from the Commission's long-standing policies and procedures. Because, no party to this rulemaking, including Northpoint, objects to the basic premise in SkyTower's Petition (*i.e.*, that the Commissions' rules be technologically neutral), SkyTower's Petition is in the public interest and should be granted.

Northpoint continues to confuse this rulemaking proceeding, which allocated spectrum for secondary uses of the Ku band, as a licensing proceeding limited to the grant of its applications.¹ If the Commission's decision to allow a MVDDS service is sustained on reconsideration, the Commission should open a window for the filing of applications and require a demonstration of an applicant's ability to comply with all noninterference rules to be adopted in the Further Notice of Proposed Rulemaking. Since there should be a window for the filing of applications, permitting SkyTower to apply for authorizations concurrently with Northpoint will not slow down Northpoint's buildout; and SkyTower's operational deployment plans may in fact precede those of NGSO FSS or other likely MVDDS applicants.²

¹ For example, Northpoint continues to argue that its "special role" in this regulatory proceeding entitles it to spectrum to the practical exclusion of parties attempting to "free-ride on Northpoint's innovation." Northpoint Opposition, p. 15. However, there is no "pioneer preference" and Northpoint is not entitled to lay claim to secondary use of the 12.2-12.7 GHz band.

² SkyTower's plans to conduct further flight tests of the Helios stratospheric platform this summer (an earlier prototype has undergone extensive flight testing). SkyTower intends to shortly seek an STA to conduct operational tests of uplink/downlink (including digital television downlink). Hence, SkyTower's plans to have its system operational by 2004 is quite realistic.

Northpoint cites SkyTower's Petition to reargue that "the Commission should forego creating a new service altogether and instead consider applications for licenses and waivers on a case-by-case basis." Northpoint Opposition, p.16. Northpoint states that if SkyTower can later show that it can share the spectrum, it should also be licensed. Northpoint Opposition, p. 18. This position is inconsistent with Northpoint's longstanding position that other applications for the 12.2-12.7 GHz spectrum are barred because the application window is closed.³ The Commission's traditional process of allocating spectrum and establishing service rules prior to the acceptance of applications serves the public interest far better than the case-by-case licensing scheme propounded by Northpoint. A case-by-case licensing scheme creates enormous incentives to be the first to file with a proposal designed to preclude other applicants. In fact, Northpoint seeks to squat on the entire 500 MHz allocated for secondary MVDDS service nationwide, and thus foreclose others. The public interest is best served by allowing competition among providers and various technologies.

Northpoint's primary objection to SkyTower's Petition is that modifying the proposed rules to allow for other technologies would be "scarcely possible" because the principle of spectrum sharing is defined by Northpoint's "innovative" technology. Northpoint Opposition, p. 16. However, Northpoint presents no evidence supporting this broad statement. In addition, such concerns are properly addressed in the further rulemaking on MVDDS license and service rules, and not

³ See, e.g., Northpoint's Reply Comments on the Further NPRM, p. 5 (filed April 5, 2001) (stating "[t]he failure of anyone but Northpoint to submit a license application by the January 8 [1999]

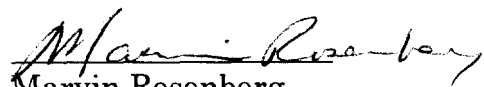
in an opposition to SkyTower's Petition. SkyTower did express concern that the Commission not draw its interference regulations so narrowly as to exclude technologies other than terrestrial tower systems; however, SkyTower's Petition basically asks that the rules allow stratospheric platforms to be eligible for MVDDS licenses. SkyTower Petition, p. 10.

None of the participants in this rulemaking object to the basic premise of SkyTower's Petition - that the Commission take a technologically neutral approach to developing and approving secondary uses of the 12.2-12.7 GHz band so as not to preclude new technologies, and that such an approach allow for approval of the stratospheric platform technology. As set forth in SkyTower's Petition, allowing for stratospheric platforms and other new technologies to be eligible to reuse the 12.2-12.7 GHz band on a non-interference basis with primary services is in the public interest.

deadline is sufficient reason to deny any would-be competing application.”).

WHEREFORE SkyTower urges the Commission to grant its Petition for
Reconsideration.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Marvin Rosenberg".

Marvin Rosenberg
Jonathan Epstein
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006
(202) 955-3000

Counsel for SkyTower, Inc.


May 4, 2001

CERTIFICATE OF SERVICE

I, Inder Kashyap, hereby certify that on this 4th day of May, 2001, a copy of the foregoing was served by first class mail, postage pre-paid, on the following:

Antoinette Cook Busch
Northpoint Technology, Ltd.
400 North Capitol Street, N.W.
Suite 368
Washington, D.C. 20001

Michael K. Kellogg
J.C. Rozendaal
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
Sumner Square
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036


Inder Kashyap

WAS1 #950781 v1